the courts of the Border States,[20] in the Federal courts,[21] and in New York.[22] There seems to be no case in the United States, in which the doctrine of dissolution is seriously questioned; and hence it is reasonable to believe that all partnerships existing prior to our entry into the European War, between residents of the United States and those of subsequently hostile countries, were *ipso facto,* by act of law, dissolved immediately upon the declaration of war.[23]

RIGHT OF OWNER OF BANK NOTE TO RECOVER ITS FACE VALUE IN CASE OF LOSS OR DESTRUCTION.—It is a well settled principle of the law merchant that the owner of a lost negotiable note can recover of the maker or indorser its true amount, if he can establish its former existence by secondary evidence; but he must give the maker or indorser an indemnity, securing him against the future reappearance of the note in the hands of a *bona fide* purchaser for value.[1] A recovery may likewise be had where the note is wholly destroyed, though in this case a bond of indemnity need not be given, as it is impossible for the note to be presented again.[2] However, the fact of destruction must be proved beyond a reasonable doubt, or else indemnity will be required.[3]

A private note, that is, one made by one person in favor of another and not designed to circulate as currency, has an individuality and distinctiveness of appearance not possessed by a bank note. The latter is usually issued as one of a large series, practically uniform in pattern. This similarity in appearance is especially marked at present, when all the bank notes in the country are issued either by the national or the Federal Reserve banks and engraved for them by the Treasury Department. The only marks identifying a particular note are the names of the issuing bank, its president and cashier, and certain numerals and letters appearing on its face. Again, bank notes pass in the commercial world as freely as the currency of the government itself, being payable to bearer, whereas private notes usually pass by indorsement and through comparatively few hands before they are presented for payment. Thus it will be seen that the difficulty of identification upon loss or destruction is far greater in the case of a bank note than in that of a private note.

This circumstance is the basis of all the trouble in a claim by the unfortunate owner of a lost or destroyed note against the bank

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[20] Taylor *v.* Hutchinson, 25 Gratt. (Va.) 536, 18 Am. Rep. 699; Booker *v.* Kirkpatrick, 25 Gratt. (Va.) 145. See *dictum* in N. Y. Life Ins. Co. *v.* Clopton, 7 Bush (Ky.) 179, 3 Am. Rep. 290.

[21] The William Bagaley, 5 Wall. 377.

[22] See note 19, *supra.*

[23] War was declared on Germany on April 6, 1917, and on Austria-Hungary on December 7, 1917.

[1] 2 DANIEL, NEGOTIABLE INSTRUMENTS, 6th ed., § 1480; 2 PARSONS, NOTES AND BILLS, 2nd ed., p. 302.

[2] Wofford *v.* Board of Police, 44 Miss. 579; Scott *v.* Meeker, 20 Hun (N. Y.) 161.

[3] Moses *v.* Trice, 21 Gratt. (Va.) 556.

which issued it. The owner claims payment on the same grounds that he would, had the instrument been a private negotiable note. The bank has promised on the face of the note to pay to the bearer a certain amount upon presentation at the bank. The note, itself, is merely the evidence of the promise—the muniment of the holder's claim. Hence, though it is lost or destroyed, the bank's promise to the holder remains undischarged.

As has been seen, the owner of a lost private note may recover upon furnishing sufficient proof of its former existence and tendering indemnity in case the note should turn up and have to be paid.[4] Where a bank note is lost, however, the authorities are in general agreement that there can be no recovery, even though indemnity be offered. This holding is based upon the virtual impossibility of giving adequate indemnity to the bank. Even were the owner able, as would rarely be the case, to identify the lost note by its number or other mark, it would be unreasonable to require the bank to examine the number of each of its notes presented in the course of business in order to ascertain whether it was the one that was lost. Furthermore, even if the bank should in this way discover the note, it would still be bound to pay it, if presented by a *bona fide* holder for value. And in nearly every case the holder would answer this description, because of the practical impossibility of proving notice to him of the loss of the note. So it is almost universally held that the bank should not be subjected to this gross injustice in order to relieve the loser from the consequences of his own negligence or misfortune.[5]

The case of *Hinsdale* v. *Bank of Orange*[6] is usually cited as an authority for this point, but the question before the court was rather one of destruction than of loss. The holder of bank notes had halved them for safe transmission by mail, but only the right hand halves were received. It was held that the holder could recover from the bank the full amount of the notes. The dicision was based upon the ground that by cutting the notes in two their negotiability was destroyed, so that there could be no *bona fide* holder of the lost halves and consequently no possibility of a double recovery from the bank. The distinction between loss and destruction was thus drawn by Justice Marcy:

> "If the owner of a bill *loses* it, he cannot recover; but if he can prove that it is actually *destroyed,* he may. The reason of this distinction is very obvious. Although the note is *lost* to the rightful owner, it may yet be in hands of a *bona fide* holder, or in the hands of one claiming to be such, and the maker may be called on to pay it without having the means of showing that the holder is not entitled to payment; but if the note be *destroyed,* such cannot be the case."

The only State, in which the contrary doctrine has been held, is

[4] *Supra.* See note 1.
[5] 2 MORSE, BANKS AND BANKING, 3rd ed., § 649; 2 DANIEL, NEGOTIABLE INSTRUMENTS, 6th ed., § 1693.
[6] 6 Wend. (N. Y.) 378.

Georgia. In the cases of *Waters* v. *Bank of Georgia,* decided in 1822, and *Robinson* v. *Bank of Darien,* decided in 1855, it was held that the holder of a lost bill may recover from the bank, provided he furnishes the latter a bond of indemnity. But it is obvious that no satisfactory indemnity can possibly be given in such an event. These cases have been strongly disapproved and can be considered as possessing but very slight authority.[9]

The further question arises as to the liability of the bank where the whole note has not been lost, but destroyed. On principle, the owner should recover, since the note is merely the evidence of the bank's obligation and not the obligation itself. In fact, most of the authorities hold that he may recover without giving indemnity, provided always that he can give satisfactory proof of the ownership, identity and destruction of the bills.[10] Where the evidence establishes beyond question the fact that the bills were destroyed, there is no need for indemnity, since there is no risk of a second payment. But a bond of indemnity is often required, even where there is ample proof of destruction, in order to furnish the bank every possible safeguard against imposition.[11]

It has been maintained that to allow a recovery upon a destroyed note, where the evidence is merely circumstantial and not positive, would be to open wide the door to fraud; that by collusive and fraudulent representations the bank could be compelled to pay to unscrupulous persons large amounts, claimed under notes alleged to have been destroyed. It is probable that in the majority of cases the bank would be without any means whatever of disproving the alleged possession and destruction of the notes. Consequently the most convincing proof of these facts should be required.[12]

On the question of what constitutes sufficient evidence for the plaintiff to recover, it is difficult to reconcile the case of *Wade* v. *New Orleans Canal Co.*[13] with the later case of *Tower* v. *Appleton Bank.*[14] In the former, the evidence showed that the plaintiff had drawn from the defendant bank twenty hundred-dollar bills and one fifty-dollar bill, all issued by the bank, and had placed them in a cabinet in her sleeping-room. Soon afterward the house caught fire and was completely destroyed together with all the furniture. The plaintiff was allowed to recover upon giving the bank indemnity.

In *Tower* v. *Appleton Bank,* there was evidence that the plaintiff left certain bills issued by defendant in a trunk in his room and that no one entered the room after he left it. The house was burned

[7] R. M. Charlt. (Ga.) 193. [8] 18 Ga. 65.

[9] 3 AM. & ENG. ENCYC. LAW, 2nd ed., 782; 2 MORSE, BANKS AND BANKING, 3rd ed., § 649.

[10] Bank of Louisville *v.* Summers, 53 Ky. 306; Bank of Mobile *v.* Meagher, 33 Ala. 622.

[11] Wade *v.* New Orleans Canal Co., 8 Rob. (La.) 140, 41 Am. Dec. 296.

[12] Tower *v.* Appleton Bank, 3 Allen (Mass.) 387.

[13] *Supra.* [14] *Supra.*

within an hour after his departure, and the trunk and its contents destroyed. The plaintiff tendered an indemnifying bond, but the court refused relief on the ground that a recovery could not be had upon merely circumstantial evidence of destruction.

This latter case seems eminently sound. While admitting the right of the owner to recover upon conclusive proof of destruction, it held that circumstantial evidence alone was not sufficient. Furthermore, the possibility of giving adequate indemnity under the circumstances was denied. In the opinion by Justice Hoar, the court said:

> "If the bills were shown to be actually destroyed, beyond all question or controversy, the case might be different; as, for instance, if the destruction were admitted by the pleadings. But upon the mere preponderance of proof, which is sufficient to authorize a jury to find a fact in issue, we think it is not to be assumed conclusively that the bills are destroyed, without further provision for the defendant's security against their reappearance. If, then, it is sought to provide this security by a bond of indemnity, how can such a bond be given? There is nothing to distinguish or identify the bills which the plaintiff says have been destroyed. Against a second payment of what bills are the defendants to be indemnified? How could they show that any bills already redeemed, or hereafter to be redeemed, were or were not the bills in question? * * * But suppose that several parties should sue upon bills alleged to have been destroyed, and should recover, each giving a bond of indemnity. If it should afterward appear that all the bills had not been destroyed, upon which bond would the defendants have a remedy?"

There seems to be no established doctrine in Virginia on the right to recover in event of loss or destruction of bank notes. The only decisions are cases of the cutting of bills in two for safety of transmission in the mails. The plaintiff was allowed to recover on the halves in his possession upon giving a bond of indemnity to the bank.[15] This holding is in accordance with the general trend of the decisions.[16]

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[15] State Bank *v.* Ward, 6 Munf. (Va.) 166; Farmers' Bank *v.* Reynolds, 4 Rand. (Va.) 186.

[16] Hinsdale *v.* Bank of Orange, *supra;* Martin *v.* Bank of the United States, 4 Fed. Cas. 885; Bank of the United States *v.* Sill, 5 Conn. 106, 13 Am. Dec. 44. In the last case, Peters, J., said: "The case of Mayor *v.* Johnson, 3 Campb. 324, is directly in point. In that case judgment was rendered for the defendant, by Lord Ellenborough, on the ground that the lost half of a bank bill was negotiable, and would enable a *bona fide* holder to recover of the bank; which, with all due deference to an illustrious judge, I am bound to say, is not law. As well might a vignette, or any other fragment torn from a bill, be considered negotiable. The only apology I can make for his lordship is, that he was on the circuit, where business is done in haste, without time and means for investigation and consideration, and where the greatest judges frequently err. 'Quandoque bonus dormitat Homerus.'"